

77-1601

Supreme Court, U. S.
FILED
MAY 8 1978

MICHAEL ROBAX, JR., CLERK

Supreme Court
of the
United States

CAMILLE MILLER PERRY
and
EUGENIA SUMMERLIN,
Petitioners

vs

IRENE WILSON, CECILA BUCHANAN
and
JOSEPHINE MATTOX,
Respondents

vs

C. L. HIGGISON,
Respondent

ATTORNEY FOR PETITIONERS

Randall M. Clark
P.O. Box 384
Brunswick, Georgia 31520
912-264-6661

PETITION FOR CERTIORARI

This case is reported in Perry vs. Higgison, 144 Ga. Apps, 58.

Jurisdiction is invoked under the certiorari jurisdiction of this court to review rulings of state courts involving constitutional law issues.

The Georgia Court of Appeals ruled on November 7, 1977, and denied rehearing on November 18, 1977. The Georgia Supreme Court was petitioned for certiorari which it denied and denied reconsideration on February 8, 1978.

This court has jurisdiction pursuant to 28 U.S.C. 1257 (3).

The question presented for review is:

1. Does the following charge violate the principles announced by this court in Trimble vs. Gordon 52L Ed 2d 31.

"Furthermore, an illegitimate child cannot inherit from his grandparents, his uncles and aunts, his nephews and nieces, his cousins or any legitimate children of his mother. Under the rules of inheritance of Georgia the illegitimate child can only inherit from his mother and other illegitimate children of his mother. On the other hand, quite a few people can inherit from the illegitimate child.

Such words as child, children, and issue, used in the rules of inheritance in the State of Georgia, are deemed to mean legitimate children only." T295.

The constitutional provision violated is the decision in Trimble vs. Gordon 52L Ed 2d 31. The Georgia Law involved is the Official Code of Georgia, 1933, Section 113-904.

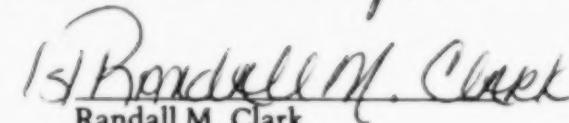
"Bastards have no inheritable blood, except that given to them by express law. They may inherit from their mother, and from each other, children of the same mother, in the same manner as if legitimate. Legitimate and illegitimate children of the same mother shall inherit alike the estate of the mother. If a bastard dies leaving no issue or widow, his mother, brothers, and sisters shall inherit his estate equally. In distributions under this law the children of a deceased bastard shall represent the deceased parent."

This case was for distribution of an estate and to determine the identity of the heirs-at-law of one Fleeta Morrison, a black woman who lived on St. Simons Island, Georgia and who died in 1957.

Counsel for claimants objected to the charge as follows: (T298) "Your honor, at this time, I object to any discrimination. I object to the court's instructions making a discrimination to the legitimacy or illegitimacy of a child. We object on the basis of it being unconstitutional to the state, and unconstitutional as it is applied here."

The court responded by saying "Is that all?" (T298) The issue was raised in the motion for a new trial. The issue of the constitutionality of the charge was presented to the Georgia Court of Appeals which ruled that a constitutional law issue was not properly raised. The issue was presented to the Georgia Supreme Court by petition for certiorari which was denied. The writ should be granted to ensure compliance with the decision of this court in Trimble vs. Gordon 52 L Ed 2d 31.

Respectfully submitted this 5 day of May, 1978.


Randall M. Clark

1706 Ellis Street
P. O. Box 384
Brunswick, Georgia 31520
912-264-6661

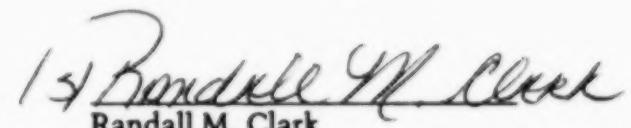
CERTIFICATE OF SERVICE

Service by mailing a copy to:

Attorney for C. L. Higgison
Robert Killian
P. O. Box 1795
Brunswick, Georgia 31520

Attorney for Irene Wilson,
Cecilia Buchanan and Josephine Mattox
William Major
310 Fulton Federal Bldg.
Atlanta, Georgia 30303

and notifying the Georgia Court of Appeals of this petition by
mailing copies on this 5 day of May, 1978.


Randall M. Clark

1706 Ellis Street
P. O. Box 384
Brunswick, Georgia 31520
912-264-6661

SMITH, Judge.

In this case involving the distribution of an estate, appellants claim the trial court erred in its charge and in overruling their motion for new trial. We affirm.

1. Appellants objected, as follows, to the charge setting out the principle of Code § 113-904: "Your honor, at this time, I object to any discrimination. I object to the court's instructions making a discrimination to the legitimacy or illegitimacy of a child. We object on the basis of it being unconstitutional to the state, and unconstitutional as it is applied here." This objection was insufficient to raise any Constitutional question as to the law charged, and the trial court's overruling of the objection was not error. Elinburg v. State, 227 Ga. 246 (179 SE2d 926) (1971).

2. Appellants filed their motion for new trial on December 19, 1975, before the court entered its judgment, on December 22, 1975. Since the motion for new trial was void, the trial court did not err in denying it. Moore v. Moore, 229 Ga. 600 (193 SE2d 608) (1972).

Judgment affirmed. Bell, C. J., and McMurray, J., concur.

**Court of Appeals
of the State of Georgia**

ATLANTA, November 18, 1977

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

54445. Camille Perry et al. v. C. L. Higgison et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

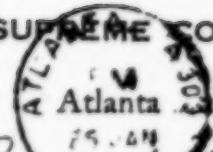
CLERK'S OFFICE, ATLANTA, November 18, 1977

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

CLERK.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA



Dear Sir:

Case No. 33242, Perry et al. v. Haggard et al.

The Supreme Court today denied
the writ of certiorari in this case.

Very truly yours,

MRS. JOLINE B. WILLIAMS, Clerk

Clerk's Office, Supreme Court of Georgia

DEAR SIR:

ATLANTA 2/8/78

The motion for a ~~rehearing~~ was denied today:

Case No. 33242, Perry et al v. Haggard et al.

Yours very truly,

MRS. JOLINE B. WILLIAMS, C